

## **PUBLIC MEETING MINUTES**

February 7, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

### **Members Present**

Karen L. Neuwald, Chair  
Sally M. McKeag, Member  
Robin W. Wesley, Member  
Tiffany Rystrom, Member  
Alice Dowdin Calvillo, Member

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer (Excused)

### **Call to Order**

Chair Neuwald called the Board to order for a return to the open session of the December 13, 2007 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in December, the Board has issued PERB Decision Nos. 1924a, 1932-M, 1933-H, 1934, 1935, 1936, 1937-M, 1938-M, 1939-M, 1940-M, 1941 and 1942-C, and Administrative Appeal No. Ad-369. In request for injunctive relief (I.R.) No. 534 (Alex Hernandez v. SEIU Local 1000), the request was denied; I.R. No. 535 (Amalgamated Transit Union Local 1277 v. Riverside Transit Agency), the request was denied; I.R. No. 536 (Los Angeles Unified School District v. United Teachers of Los Angeles), the request was denied; I.R. No. 537 (Sonoma County Law Enforcement Association v. County of Sonoma), the request was denied; and I.R. No. 538 (Alex Hernandez v. SEIU Local 1000), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Chair Neuwald at this time announced and welcomed PERB's newest Member, Alice Dowdin Calvillo, who was appointed to the Board in January of this year. Member Dowdin Calvillo

comes to the Board from the Governor's Office where she first held the position of Deputy Appointments Secretary, was subsequently appointed to the position of Chief Deputy Appointments Secretary and then as the Chief Deputy Cabinet Secretary to the Governor. Prior to that, Member Dowdin Calvillo was the Governor's Legislative Director for the Department of Toxic Substances Control and was a member of the Auburn City Council from 1998-2005. She has a variety of other experiences in the public sector and also on a volunteer basis.

Member Dowdin Calvillo thanked the Board, expressed her pleasure in serving at PERB and that she looked forward to meeting and working with PERB constituents.

**Motion:** Motion by Member McKeag and seconded by Member Dowdin Calvillo to close the December 13, 2007 public meeting.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Chair Neuwald opened the meeting of February 7, 2008, and Member McKeag led in the Pledge of Allegiance to the Flag.

### **Minutes**

**Motion:** Motion by Member Rystrom and seconded by Member McKeag that the Board adopt the minutes of the Public Meeting of PERB for December 13, 2007.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Comments From Public Participants**

Although there were no comments from public participants, Kevin Colburn of the California Teachers Association; Greg Eddy from the California Federation of Teachers; and Cliff Kusaba also from the California Teachers Association, were in attendance at today's meeting. They introduced themselves to new Member Dowdin Calvillo and their presence was acknowledged by the Board.

### **Staff Reports**

#### **a. Administrative Report**

Chair Neuwald provided the administrative report on behalf of Chief Administrative Officer Eileen Potter who was absent from today's meeting. She first reported on matters related to the budget. The Legislature is in special session to deal with the fiscal emergency for the current year's budget. Chair Neuwald and General Counsel Tami Bogert attended and provided an update on PERB's budget at a hearing in the Assembly Budget Subcommittee No. 4. With no itemized current year reductions, action was not

taken on PERB's budget at this hearing. Specifically, testimony was given as to what was proposed in PERB's budget for the current fiscal year and Fiscal Year 2008-2009. Similar hearings were held the following week in the Senate, although no hearings were held with agencies who were not taking any current year reductions. It is expected that the Senate hearings will be held in the same manner as in prior years. There are no current year reductions anticipated for PERB.

Chair Neuwald reported that for those who have not looked at the budget, there are budget reductions being proposed for PERB as part of the ten percent across-the-board cut for state agencies. She pointed out some of the major highlights in the budget, but encouraged interested parties to look at the Governor's budget for more details. To achieve a ten percent cut in PERB's budget the Governor proposed: (1) deleting the budget change proposal adding three staff positions for workload adjustments; (2) eliminating the budget for fact-finding; and (3) closing the San Francisco Regional Office with no staff reductions.

Chair Neuwald reported on the progress of the potential move of PERB's office in Southern California. A two-prong approach is still being pursued with regard to this matter. Negotiations with the landlord at the current site are ongoing. Responses have been received to PERB's request for bid from several sites visited in the Glendale area. The Department of General Services has responded to these bids, and it is anticipated that the list should be narrowed down within a couple of weeks.

As a last item, Chair Neuwald reported on PERB decision notification via email. On the PERB website, interested parties have the ability to sign up and receive notification when decisions are issued. Possibly due to server protections on each recipient's site, a number of emails are being returned. If parties have not been receiving these notifications, PERB is aware of and is working on how best to correct this problem. Information regarding this matter will be posted on the PERB website. Any additional questions should be directed to PERB's Chief Administrative Officer, Eileen Potter.

b. Legal Report

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. Included in the case processing report is information regarding investigations and staff disposition of cases filed with PERB. She explained that cases filed include unfair practice charges, representation matters, and impasse requests. During the months of December and January, case processing was summarized as follows: 171 new cases were filed; 184 case investigations were completed; and 42 informal settlement conferences were held. Also during this same two-month period, 4 requests for injunctive relief were filed, each of which were considered by the Board and ultimately denied.

With regard to litigation, Ms. Bogert first reported on the disposition of three cases, all which sought to challenge a Board decision: (1) in a new case, Doherty et al. v. PERB et al., Sixth District Court of Appeal, Case No. H032365, the administrative record has been filed and PERB's response brief will be due sometime in March; (2) the court

dismissed the case in Jurupa Community Services District v. PERB et al., Fourth Appellate District, Case No. E044031, the dispute in the underlying unfair practice charge was resolved and dismissal of the litigation followed; and (3) the court's decision has now become final in CSU v. PERB et al., Second Appellate District, Case No. B189869. Ms. Bogert continued reporting that oral argument has been set for February 20 in California Faculty Association v. PERB et al., Third Appellate District, Case No. C054725. She then reported that PERB continues to await word from the appellate courts in the essential employee strike cases. With regard to these cases, Harry Gibbons, a Senior Attorney in the General Counsel's Office at PERB, recently presented oral argument in the First District Court of Appeal. Oral argument has now been presented in two of the three appellate courts which are hearing these cases. (County of Contra Costa v. Public Employees Union Local One et al. / County of Contra Costa v. CA Nurses Assn. et al., First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227; County of Sacramento v. AFSCME Local 146 et al. / County of Sacramento v. AFSCME Local 146 et al., Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790.)

In conclusion, Ms. Bogert provided some staff information. Just following the Board's December Public Meeting, Staff Counsel Yaron Partovi marked his one-year anniversary with PERB. Mr. Partovi was not present at today's meeting because he was conducting an informal settlement conference. Ms. Bogert extended, on behalf of the entire General Counsel's Office, congratulations and thanks to Mr. Partovi for his service to PERB.

Chair Neuwald inquired about the disposition of the mailbox case, which is before the California Supreme Court. Ms. Bogert responded the Supreme Court granted review and that briefing is underway in that case. (San Leandro Teachers Assn. et al. v. San Leandro Unified School District et al., California Supreme Court, Case No. S156961.)

Chief Administrative Law Judge McMonigle reported that currently the Administrative Law Judges (ALJ) have 22 decisions to write. This is approximately 3 decisions to write per ALJ. Each ALJ also has approximately 6 cases assigned for formal hearing. He reported that with 7 ALJs, the Division is able to meet various traditional timeline goals set at PERB. The current caseload per ALJ is good but there appears to be more cases coming down the pipeline. He noted that 14 cases were assigned for formal hearing in January, which is a significant number. Regarding future statistics, he noted from the General Counsel's report that in January, 21 complaints were issued. In February, 25 cases were scheduled for informal settlement conference. It appears that one-half of new complaints are being settled and the other half are assigned to formal hearing. Those cases assigned for formal hearing are now being scheduled within the 60-90 days. He continued reporting that 5 proposed decisions were issued in January bringing the fiscal year total to 22. The time for issuance of these decisions is currently 64 days. The agency's guideline for issuance is 60-90 days. In conclusion, Mr. McMonigle reported that if the numbers noted above continue, an increase in workload per ALJ is possible. With 7 ALJs, any work that is assigned should be completed in a timely fashion.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported that there was nothing pending with regard to regulations at this time and there is very little pending with regard to legislation. The General Counsel's Office has resumed circulating to the Board weekly updates regarding legislation that is of interest to PERB. He reported that there is one bill that carried over from last year, Assembly Bill 1463 (Eng), which attempts to bring those joint-powers agencies formed by school employers, school districts or county offices, under the coverage of the Educational Employment Relations Act rather than the Meyers-Milias-Brown Act. That bill passed the Assembly last year and was still pending final action in the Senate. More recently, Senate Bill 867 (Cedillo), was gutted and amended to bring into its provisions the proposal for child care provider representation rights. That legislation has been attempted a few times by the Legislature, passed twice, including last year, and both bills were vetoed by the Governor. This bill, in its current form, is essentially identical to the prior year's measure. With that, Mr. Chisholm concluded that the General Counsel's Office will continue to monitor those two bills and look for any legislation introduced that would be of interest to PERB.

Member Dowdin Calvillo asked if the Board ever took positions on legislation in a public setting. Member Neuwald responded that PERB could, but as a neutral agency PERB traditionally has rarely taken a position on legislation.

**Motion:** Motion by Member Wesley and seconded by Member Rystrom that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

**Old Business**

None.

**New Business**

None.

**General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through April 10, 2008, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation

(Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member McKeag that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Karen L. Neuwald, Chair